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**IN THE  
COURT OF APPEALS OF INDIANA**

HAROLD W. CRAIGO, JR.,

Appellant-Petitioner,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A03-0609-PC-439

APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable George W. Biddlecome, Judge  
Cause No. 20D03-0507-PC-20

**May 30, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

## SHARPNACK, Judge

Harold Craig, Jr. appeals the post-conviction court's partial denial of his petition for post-conviction relief. Craig raises one issue, which we revise and restate as whether the post-conviction court erred when it failed to award Craig twenty-two days of credit for time served. We affirm in part, reverse in part, and remand.

The relevant facts follow. On July 18, 1995, Craig was arrested in Madison County under cause number 48E01-9507-DF-080 ("Cause #80"), for operating while intoxicated as a class D felony<sup>1</sup> and being an habitual traffic violator as a class D felony.<sup>2</sup> On September 23, 1995, Craig was released on bond. Craig pleaded guilty to "Count I, Driving While Intoxicated, Class A Misdemeanor, Count III, Driving While Intoxicated, Sentence Enhancement, Class D Felony and Count II, Driving While Suspended, Class D Felony." Petitioner's Exhibit E. On January 29, 1998, the Madison County court sentenced Craig to serve eighteen months in the Indiana Department of Correction for Counts I and III and twelve months for Count II. The trial court ordered that the sentences run consecutively and suspended the sentences except for six months. The Madison County court awarded Craig "credit for time served and goodtime credit of 132 days, leaving a balance to serve on 44 days." Id.

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<sup>1</sup> Petitioner's Exhibit D lists the "Charge Code" as "9-11-2-3," however Ind. Code § 9-11-2-3 was repealed by Pub. L. No. 2-1991, § 109.

<sup>2</sup> Ind. Code § 9-30-10-16 (1995) (subsequently amended by Pub. L. No. 120-2000, § 2 (eff. July 1, 2000) and Pub. L. No. 1-2001, § 9 (eff. July 1, 2001)).

On November 1, 1997, while Cause #80 was pending, Craig was arrested in this case in Elkhart County and charged with operating a vehicle after his driving privileges had been forfeited for life as a result of his being adjudged an habitual traffic violator<sup>3</sup> and possession of marijuana<sup>4</sup> under cause number 20D03-9711-CF-147 (“Cause #147”). On November 23, 1997, Craig was released on bond. Craig pleaded guilty to operating a vehicle after having forfeited his driver’s license for life as a habitual traffic violator as a class C felony and the possession of marijuana charge was dismissed. On February 27, 1998, the Elkhart Superior Court sentenced Craig to serve eight years in the Indiana Department of Correction and suspended six years. The Elkhart Superior Court noted at sentencing, “I don’t think Mr. Craig is entitled to any credit time because it appears to me that the time he spent in custody on this offense was credited against the Madison County offense.” Petitioner’s Exhibit A at 20.

In May 2006, Craig filed an amended petition for post-conviction relief and argued, in part, that the trial court failed to award him credit for time served including the twenty-two days he served in the Elkhart County jail from November 1, 1997, until November 23, 1997. On July 27, 2006, the post-conviction court held an evidentiary hearing. After the hearing, the post-conviction court entered findings of fact and conclusions thereon awarding Craig 354 days of credit for time served along with “a

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<sup>3</sup> Ind. Code § 9-30-10-17 (1995).

<sup>4</sup> Ind. Code § 35-48-4-11 (1995).

like amount of good time credit.” Appellant’s Appendix at 141. The 354 days did not include the twenty-two days served in the Elkhart County jail from November 1, 1997, to November 23, 1997.

Before discussing Craig’s allegations of error, we note the general standard under which we review a post-conviction court’s denial of a petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id. Further, the post-conviction court in this case entered findings of fact and conclusions thereon in accordance with Indiana Post-Conviction Rule 1(6). Id. “A post-conviction court’s findings and judgment will be reversed only upon a showing of clear error – that which leaves us with a definite and firm conviction that a mistake has been made.” Id. In this review, we accept findings of fact unless clearly erroneous, but we accord no deference to conclusions of law. Id. The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. Id.

The sole issue is whether the post-conviction court erred when it failed to award Craig twenty-two days of credit for time served. Craig argues that the post-conviction court erred in failing to award him credit for the twenty-two days he spent in jail from

November 1, 1997, when he was initially arrested and taken into custody for charges under Cause #147, to November 23, 1997, when he was released on bond.

“Indiana Code Section 35-50-6-3 sets forth in no uncertain terms that a person confined awaiting trial or sentencing is statutorily entitled to one day of credit for each day he is so confined; therefore, pre-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion.” Weaver v. State, 725 N.E.2d 945, 947-948 (Ind. Ct. App. 2000).

Specifically, Craigo argues that during the original sentencing hearing in Cause #147, the trial court indicated that Craigo was not entitled to jail time credit for those days because credit for those days had been awarded to Craigo under Cause #80 and that an examination of Cause #80 reveals that the twenty-two days were never credited in Cause #80. Craigo argues that “the Madison County court awarded Craigo jail time credit for the sixty-six actual days he served in the Madison County Jail, but not the twenty-two days he served in the Elkhart County Jail under Elkhart County [Cause #147].” Appellant’s Brief at 8. The State agrees that the 132 days of credit awarded by the Madison County court in Cause #80 “does not leave any room to also cover the twenty-two days [Craigo] was incarcerated in Elkhart County on his new charges there.” Appellee’s Brief at 6. The State acknowledges that “the evidence is uncontradicted and leads unerringly to a conclusion opposite that reached by the post-conviction court, namely that [Craigo] is entitled to credit for these twenty-two days” and “the State believes that remand is appropriate to correct this credit time calculation.” Id.

We will review whether the twenty-two days were credited in Cause #80 by the Madison County court. On July 18, 1995, Craigo was arrested in Madison County under Cause #80. On September 23, 1995, Craigo was released on bond after serving sixty-six days in the Madison County jail. On January 29, 1998, the Madison County Court sentenced Craigo to serve six months in the Indiana Department of Correction and awarded Craigo “credit for time served and goodtime credit of 132 days, leaving a balance to serve on 44 days.” Petitioner’s Exhibit E. Accordingly, the Madison County court awarded Craigo sixty-six days of credit time for days served in the Madison County jail and sixty-six days of good credit time to total 132 days of credit time, but not credit time for the twenty-two days that Craigo served in Cause #147. See Ind. Code §§ 35-50-6-3(a); 35-50-6-4(a). Thus, we conclude that the post-conviction court erred when it failed to award Craigo twenty-two days of credit for time served. See, e.g., Tate v. State, 813 N.E.2d 437, 439 (Ind. Ct. App. 2004) (remanding to the trial court to revise the sentence so that defendant received credit for time served in pretrial confinement).

For the foregoing reasons, we affirm in part, reverse in part, and remand to the post-conviction court to award Craigo twenty-two days of credit for time served and any corresponding good time credit.

Affirmed in part, reversed in part, and remanded.

MAY, J. and BAILEY, J. concur